

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

First-Class Mail and Periodicals
Service Standard Changes, 2021

Docket No. N2021-1

DOUGLAS F. CARLSON
MOTION TO STRIKE A PORTION OF THE DIRECT TESTIMONY
OF POSTAL SERVICE WITNESS STEVEN W. MONTEITH (USPS-T-4)

May 27, 2021

Pursuant to 39 C.F.R. § 3020.105(c), I move to strike the portions of the testimony of Postal Service witness Steven W. Monteith in USPS-T-4 that refer to an Office of the Inspector General report that stated a survey result relating to customers' expectations for delivery times of First-Class Mail. Specifically, I move to strike two sentences, from page 19, line 20 to page 20, line 5: "An OIG report noted that '[w]hile existing service standards for FCM is three to five days, we completed a nationally representative survey in 2019 that demonstrated 71 percent of respondents expected their sent to [sic] mail to arrive in seven days' [footnote omitted]. This suggests that some customers may not be impacted by the service standard changes as they have already expected longer delivery times than our current service standards." The basis for this motion to strike is rule 323, which prohibits introduction of market research without accompanying detail about "questionnaires or data collection instruments, survey variables, and the possible values."

I. BACKGROUND

The Postal Service's proposal in this docket would slow delivery of approximately 39 percent of First-Class Mail by at least one day and nearly 10

percent of First-Class Mail by two days.¹ Among other statutory provisions, the Postal Service's proposal implicates the requirement in 39 U.S.C. § 403(a) to “develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees.”

The testimony of witness Monteith attempts to explain the needs of customers. These needs, in turn, inform the adequacy of service. For this determination, the Postal Service relies on existing market research indicating that the top five customer satisfaction drivers are “reliability,” “consistently delivers the mail when expected,” “provides fast mail delivery,” “keeps my mail safe,” and “delivers to the correct address.”² From this research, witness Monteith speculates that slowing the mail will not affect customer satisfaction scores and may even improve them because, under the proposal in this docket, the mail will be reliably and consistently slow.³

To attempt to demonstrate adequacy of service, the Postal Service relies on witness Monteith's hopeful inferences from market research that does not actually ask customers for their views about the proposal that is the subject of this docket. In addition, in place of market research that would be subject to evaluation and cross-examination in this proceeding, witness Monteith cites an Office of the Inspector General report. Witness Monteith writes, “An OIG report noted that ‘[w]hile existing service standards for FCM is three to five days, we completed a nationally representative survey in 2019 that demonstrated 71 percent of respondents expected their sent to [sic] mail to arrive in seven days.’”⁴ The OIG report is number 20-215-R21, Peak Season Air Transportation. The reference in the report cites the market research, but the citation does not lead to any publicly available information about the missing information that rule 323 requires. According to witness Monteith, this survey result “suggests that some

¹ USPS-T-3 at 22.

² See USPS-T-4 at 18 and Appendix 1 (PDF page 42).

³ See USPS-T-4 at 18–20.

⁴ *Id.* 20.

customers may not be impacted by the service standard changes as they have already expected longer delivery times than our current service standards.”⁵

I filed interrogatory DFC/USPS-T4-8(f), which asked, “For the finding that 71 percent of respondents expected their sent mail to arrive within seven days, please provide the exact question, the exact answer choices, the percentage of respondents who selected each answer choice, details about the survey sample and methodology, and the same information listed herein for any related questions in that survey about time to delivery and customers’ expectations thereof.”⁶ On May 7, 2021, the Postal Service filed a motion to be excused from responding to DFC/USPS-T4-8(f) because the information is not in the custody or control of witness Monteith or the Postal Service.⁷ The presiding officer granted the Postal Service’s motion on May 12, 2021.⁸ Witness Monteith responded on May 11, 2021, stating, “Neither the Postal Service nor I have any documents responsive to this request as the study was not conducted under the direction of Postal Service management; instead, I took notice of the contents of this publicly available report, and expect the Commission may do likewise.”

II. DISCUSSION

Without citing any rules, the Postal Service asserted in its motion that “the Commission’s rules * * * contemplate the use of public documents.”⁹ Within rule 322, which provides general rules of evidence for Commission proceedings, subsection (d) allows public documents to be offered in evidence, although the word “offered” suggests that a party’s ability to enter public documents into evidence is not absolute and is subject to objection. Rule 323 imposes specific requirements for “statistical studies offered in evidence in hearing proceedings or

⁵ *Id.*

⁶ Douglas F. Carlson Interrogatories and Requests for Production of Documents to United States Postal Service Witness Steven W. Monteith (DFC/USPS-T4-1–12), filed May 3, 2021. The opening sentence of interrogatory 8 cites the wrong pages of witness Monteith’s testimony, but the Postal Service understood the reference.

⁷ Motion of the United States Postal Service to be Excused from Responding to Douglas F. Carlson’s Interrogatory (DFC/USPS-T4-8(f)) (“Postal Service Motion”) at 2, filed May 7, 2021.

⁸ POR No. N2021-1/6, filed May 12, 2021.

⁹ Postal Service Motion at 3.

relied upon as support for other evidence[.]” For example, for market research, rule 323(a)(1)(i) requires a party to provide “questionnaires or data collection instruments, survey variables, and the possible values[.]” The absence of this information in witness Monteith’s testimony prevents participants from evaluating the finding from the OIG report that witness Monteith cited.

The Postal Service wants the Commission to accept the market research as a finding without allowing participants to examine even some basic aspects of the questionnaire. For example, we do not know how the OIG asked the question. Perhaps the survey asked participants the following question: “In how many days do you expect your mail to be delivered?” Or maybe the survey asked participants “In how many days to you realistically expect your mail to be delivered?” The addition of the word “realistically” in the second question would prompt respondents to base their answer on reality instead of, for example, the length of time that they would like to expect or think they are entitled to expect. Thus, the phrasing of the question can affect the response.

Furthermore, we do not know the possible answer values, or choices. Did the survey provide a fixed set of responses, or did it ask participants to name the number of days? For the first scenario, perhaps the survey asked which number of days reflected the respondent’s expectation most closely: three days, seven days, or 10 days. A respondent who was aware that mail often takes more than three days for delivery might have chosen seven days to reflect reality, but this respondent might have chosen five days if that answer choice had been available. Thus, the set of answer choices might have skewed responses toward seven days. On the other hand, suppose the survey asked participants to name the number of days. And imagine that the responses were distributed as follows:

Days	Percent
2	10%
3	55%
4	3%
5	1%
6	1%
7	1%
8+	29%

In this example, the percentage of respondents who expect their mail to be delivered within seven days is 71 percent, as the OIG report suggested. However, 65 percent expect their mail to be delivered in three days. These alternate findings would have vastly different implications for the adequacy of mail service that the Postal Service's proposal in this docket would provide. Indeed, the decision to report a single number from the OIG market research necessarily was judgmental. The judgment could have been a straightforward attempt to draw the line at a meaningful value and represent the findings objectively. Or the author may have been trying to prove a point. The judgment in the OIG report should be viewed skeptically because the OIG report in which the finding appeared was an advocacy document promoting relaxation of service standards during the eight weeks that the report defined as peak season.¹⁰

Even witness Monteith interpreted the OIG report's finding in his own way. The OIG stated that 71 percent of respondents expect their mail to be delivered "in" seven days.¹¹ In contrast, witness Monteith wrote that the OIG report found that 71 percent of respondents expect their mail to be delivered "within" seven days.¹² Witness Monteith's interpretation probably is correct, but it does not reflect the statement in the OIG report. This discrepancy is yet another reason why the finding from the OIG report should not be admitted into evidence. The Postal Service has one interpretation of the OIG report, the OIG report says something different, and participants and the Commission have no idea which interpretation is correct. Worse, participants and the Commission do not know whether the OIG drew the line at seven days for reporting data to support its argument to relax service standards, and we have no information about the questionnaires or data collection instruments, survey variables, or possible

¹⁰ The report defined peak season as "about eight weeks, starting on or around Thanksgiving Day in November and ending on or around Martin Luther King, Jr. Day in January." OIG Report 20-215-R21 at 1.

¹¹ *Id.* 12.

¹² USPS-T-4 at 20.

values. We also do not know whether the study produced other information that would reveal nuance in the findings or even point to a contrary conclusion.

Rule 323 exists to resolve this problem. Any market research evidence submitted into evidence must comply with this rule. Witness Monteith's testimony implicates both possibilities expressed in rule 323(a). He offered the market research into evidence, and he relied on it as support for other evidence — specifically, the conclusion that he drew from it.

The Commission should read rules 322 and 323 together in a manner that gives effect to both. Rule 322 contains general rules for evidence in Commission proceedings and allows public documents to be offered into evidence. Rule 323 contains special rules for statistical studies and market research. Thus, when a public document contains statistical studies or market research, and especially when a witness relies on the studies or market research in that public document and expresses his own conclusions about it, rule 323 controls. Also, rule 323 does not limit its scope to statistical studies and market research that the witness prepares himself. This interpretation makes sense. If witness Monteith conducted market research and tried to introduce it into evidence without providing the information that rule 323 requires, he would not be allowed to do so, or at least he would be required to respond to interrogatories requesting the missing information. Witness Monteith therefore should not be allowed to offer market research into evidence, without any supporting documentation, just because somebody else did the study, wrote a one-sentence finding, and published it in an advocacy report.

III. RELIEF REQUESTED

According to 39 C.F.R. § 3020.105(c), motions to strike are requests for extraordinary relief. This situation is extraordinary and calls for relief. The Postal Service apparently did not conduct market research to evaluate customer preferences about one of the most drastic service reductions in history. Instead, the Postal Service relies on witness Monteith's wishful interpretations of other market research data, and then the Postal Service attempts to bring in the finding from

the OIG study through the back door, avoiding the requirement in rule 323 that applies to statistical studies and market research.

The Administrative Procedure Act requires hearings that allow for “such cross-examination as may be required for a full and true disclosure of the facts.”¹³ The presiding officer has allowed the Postal Service not to produce detailed information about the OIG’s market research, so participants do not have an opportunity for cross-examination to produce a full and true disclosure of the facts of this market research.¹⁴ Rule 323 exists to avoid this situation.

I recognize and appreciate that a motion to strike is, per 39 C.F.R. § 3020.105(c), a request for “extraordinary relief.” I also respect the instruction in section 3020.105(c) that a motion to strike “shall not be used as a substitute for rebuttal testimony, briefs, comments, or any other form of pleading.” Here, the prejudice to other participants is extraordinary because we do not have the time, expertise, or money to conduct our own market research to rebut the finding from the OIG study, the details of which remain cloaked in secrecy. Moreover, the research finding in question strikes at the heart of the legal issues in this case, the adequacy of service that the Postal Service proposes to provide if it implements the changes described in this docket. The potential significance is large. In Docket No. MC96-3, the Commission cautioned that “[s]triking testimony because of its questionable probity is unnecessary in administrative proceedings, where decision-makers are able to accord appropriate weight to evidence.”¹⁵ If the only objection to witness Monteith’s testimony were the potential unreliability of the OIG market research finding, a discussion of this issue on brief would be appropriate. However, in this instance, we have rule 323, which prohibits unsupported and undocumented market research from entry into evidence in the first place. Therefore, allowing the OIG finding into evidence, and leaving participants to question its value on brief, would cause undue prejudice. Striking this portion of witness Monteith’s testimony is appropriate and necessary.

¹³ 5 U.S.C. § 556(d).

¹⁴ Even if the information is not in the Postal Service’s custody and control, the Postal Service has not represented that a phone call to the OIG would not have produced the information.

¹⁵ Docket No. MC96-3, Order No. 1143 at 4, filed December 12, 1996.

Since the Postal Service is not willing to comply with rule 323 to introduce this OIG market research finding into evidence, the only solution, which I hereby request, is to strike from witness Monteith's testimony two sentences, from page 19, line 20 to page 20, line 5.

Respectfully submitted,

Dated: May 27, 2021

DOUGLAS F. CARLSON